Supreme Court No. 80357-9 (CA 56625-3-I)
Consolidated with No. 80366-8 (CA 57068-4-I)

**IN THE SUPREME COURT**
**OF THE STATE OF WASHINGTON**

RAJVIR PANAG, on behalf of herself and all others similarly situated,
*Respondent,*
v.
FARMERS INSURANCE COMPANY OF WASHINGTON, a domestic insurance company, and CREDIT CONTROL SERVICES, INC. d/b/a Credit Collection Services,
*Petitioners.*

MICHAEL STEPHENS, on behalf of himself and all others similarly situated,
*Respondent,*
v.
OMNI INSURANCE COMPANY, a foreign insurance company,
*Defendant/Appellant,*
and
CREDIT CONTROL SERVICES, INC. d/b/a Credit Collection Services,
*Petitioner.*

# AMICUS CURIAE MEMORANDUM BY WASHINGTON LIABILITY REFORM COALITION

Tim Layton, WSBA #34114
Director of Legal Affairs
Washington State Medical Association
1800 Cooper Point Way S.W., Bldg. 7A
Olympia, WA 98502

360-352-4848

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## I. IDENTITY AND INTEREST OF AMICUS CURIAE

Washington Liability Reform Coalition ("LRC") is a broad coalition of businesses, government entities, and non-profit organizations united by their concern that the economic vitality of Washington's economy and needed social services is increasingly stifled by exposure to liability and rising defense costs. LRC's mission is to limit rapid expansion of tort liability, reduce defense costs, speed up resolution of lawsuits, and improve the fairness and certainty of the civil justice system. LRC has 70 members in Washington.

LRC is familiar with the Court of Appeals' decision below, the parties' briefing, and the issues before the Washington Supreme Court. It seeks leave to file this amicus brief because the Court of Appeals' decision is just the type of ill-conceived judicial ruling that threatens unprecedented expansion of liability and associated costs for businesses in the state.

## II. ARGUMENT

Washington ranks 27th in the recently-released nationwide study of the legal climates in each of the 50 states. *See* 2008 State Liability Systems Ranking Study, available at www.uschamber.com. Delaware was ranked number one, as the state with the best legal climate, and Illinois, Alabama, Mississippi, Louisiana and West Virginia, respectively, as the

states with the worst legal climates nationwide. States were evaluated according to 12 separate parameters, ranging from "Having and Enforcing Meaningful Venue Requirements" (Washington ranked 22nd in that category) to "Juries Predictability" (Washington ranked 30th). Washington's lowest rank, by far, was in the category of "Treatment of Class Action Suits and Mass Consolidation Suits." In that category, Washington ranked 38th -- eleven points below its overall ranking. See id. Ranking by Key Elements.

The Court of Appeals' overbroad reading of Washington's Consumer Protection Act in the case on review is precisely the type of decision that causes the state's poor ranking in a key category and the overall below-average ranking of Washington's legal climate. The most troubling aspect of the Court of Appeals' decision is its conclusion that the Consumer Protection Act applies to ***any*** commercial activity, including collection of tort obligations arising out of car accidents. As a result, the Court of Appeals allowed an uninsured driver to sue the insured driver's insurer and the collection agency that sent the uninsured driver demand letters for amounts attributable to the uninsured driver's fault under the CPA.

To be sure, the CPA is not limited to sales but extends to the multitude of trade and commercial activities that are designed to result in sales, such as advertising, marketing, and promotions (whether they result in sales or not), if the five *Hangman Ridge* elements are met. But the CPA has never been interpreted to apply to business practices that have nothing to do with sales or any of the business activities designed to result in, or facilitate sales. *Compare Physicians Ins. Exch. v. Fisons Corp.*, 122 Wn.2d 299, 311-313, 858 P.2d 1054 (1993) (the doctor had standing to sue the drug company under the CPA for failure to warn the doctor of the known dangers of the drug because the drug company targeted its marketing toward the doctors, reasoning the doctor is "comparable to the ordinary consumer") *with Tank v. State Farm Fire and Casualty Co.*, 105 Wn.2d 381, 395, 715 P.2d 1133 (1986) (Tank assaulted Walker in a parking lot; Walker sued Tank for intentional tort; Tank's insurer, State Farm, advised him that if his acts were intentional there was exclusion from coverage; this Court held that ***Walker*** had no "primary enforcement right" to sue State Farm under the CPA stating that it was "persuaded that the public as a whole would not benefit from allowing such suits").

The fundamental difference is this. In *Tank*, Walker was a complete stranger to the sale of the State Farm's insurance policy to Tank,

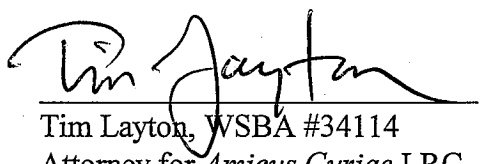
while in *Fisons*, the doctor was an integral part of the drug company's marketing of the drug to the ultimate consumer, the patient. Therefore, the doctor had standing to sue the drug company -- while Walker had no standing to sue Tank's insurer -- under the CPA.

Maintaining this distinction through the doctrine of standing is key for properly defining the zone of economic interests protected by the CPA. Without it, the CPA would be transformed into a catch-all claim available to anyone in challenging any business practice subjectively perceived as "unfair." This would disrupt the established balance between the CPA and the common law and open the door to treble damages and attorney fees in broad new categories of disputes. This is not Washington law.

The Legislature designated the statute as the "Consumer Protection Act." RCW 19.86.910. It is bad public policy for the courts abruptly to transform it into a "General Business Practices Act." Fundamental shifts of this magnitude should not be matters of judicial surprise. It is bad for the state's legal climate.

DATED this 27 day of May 2008.

Respectfully submitted,



Tim Layton, WSBA #34114
Attorney for *Amicus Curiae* LRC